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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.943 OF 2005

Swapnil Dynaneshwar Ghodke ... Petitioner

Vs.

Maharashtra University of Sciences,
Nashik & Anr. ... Respondents

Mr. V. M. Thorat for the petitioner.

Mr. R.V. Govilkar for respondent 1.

Mr. S.S. Pakale with Mr. Y.R. Mishra for respondent 2.

CORAM: SMT. RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED: 18TH NOVEMBER 2005.

P.C.:-

1. The petitioner is pursuing Bachelor of Dental Surgery course (for short, "BDS course") at Nair Hospital at Bombay. The said hospital is affiliated to respondent 1 University. It is the case of the petitioner that he appeared for 3rd Year BDS examination in October, 2004. The results were declared on 17/12/2004. The petitioner was declared failed in one subject viz. M.S. (General Surgery). The petitioner, therefore, enquired with respondent 1 University as to whether he is eligible for the benefit of ATKT. The response of respondent 1 University was in the negative and, hence, the petitioner has filed this petition.

2. According to the petitioner, the Dental Council of

India - respondent 2 is the premier body which is responsible to maintain minimum standard in Dental Courses and in dental profession. The rules and regulations framed by respondent 2 are binding upon all the Universities, Institutions and Colleges which conduct the dental courses throughout India. The rules and regulations framed by respondent 2 will have overriding effect over all the rules and regulations framed by various Universities. The relevant rule of the rules and regulations framed by respondent 2 on which reliance is placed reads as under:

> "Any candidate who fails in one subject in an examination is permitted to go to the next higher class and appear for the subject and complete it successfully before he can appear for the next higher examination. If semester system is followed, the candidate can carry one subject from one semester to the next semester only, and appear for both semester examination simultaneously."

3. The case of the petitioner is that the petitioner ought to have got the benefit of this rule.

4. We have heard the learned counsel for the petitioner. He reiterated the same submissions detailed in the petition. We have also gone through the affidavit of Mr.

Govind P. Jadhav, the Dy. Registrar of respondent 1 University. He has stated in his affidavit that the Chancellor of respondent 1 University has approved the amended Ordinance No.1 of 2002 vide Notification No.11 of 2003. The said Ordinance was made applicable since October, 2003. In view of the amended Ordinance No.1 of 2002, the concession of ATKT was not allowed in any case.

5. Our attention has been drawn by the learned counsel for the respondents to the judgment of the Nagpur Bench of this Court in a group of writ petitions viz. **Writ Petition No.2841 of 2001, Writ Petition No.2688 of 2001 and Writ Petition No.937 of 2002 decided on 4/4/2002**. In that case, the main question for consideration of the court was whether the students prosecuting their studies in BDS course are entitled to appear for next higher examination within one year, of clearing the previous qualifying examination. Reliance was placed on the rules and guidelines framed by the Dental Council of India i.e. respondent 2 herein. In fact, the reliance was on the rule which we have quoted herein above. It was contended by respondent 1 University therein that in accordance with clause 6 of Direction No.10 which governs the BDS examination, it is clearly specified that an applicant for admission to an examination, specified in paragraph 3 shall have, since passing the required qualifying examination, prosecuted a regular course of study for not less than one academic year in a Dental College affiliated to the University. It means that unless a

student after passing the qualifying examination prosecutes regular course of study for not less than one academic session, till then he cannot appear for next higher examination. After examining the above quoted rule framed by respondent 2 and clause 6 of Direction 10, which governs the BDS examination, this court held that there was no conflict in the regulations and scheme of examination of BDS course provided by respondent 2 and clause 6 of Direction 10. It was observed that what respondent 1 University has laid down is that the student is not allowed to keep term in the next higher class if he fails in any subject of qualifying examination. Reference was made to the judgment of the Supreme Court in **Dr. Priti Shrivastava and another v. State of Madhya Pradesh, AIR 1999 SC 2894** and the court observed that the University can set up higher standards and what is prescribed by respondent 2 is only to be considered as laying down minimum standard for conducting the courses for BDS examination and in case respondent 1 University chooses not to permit the students to have such facility which is commonly known as ATKT therefore, the petitioner cannot avail of such benefit relying upon the regulation and scheme of examination for BDS course set by respondent 2.

6. Our attention is also drawn to the judgment of this court in **Forum for Fairness in Education & Ors. v. University of Mumbai & Ors., 2003(4) Bom.C.R. 9**, where similar view has been taken by this court. This court

has observed that ATKT is a concession or benefit granted by the University keeping in mind all attenuating circumstances. Ordinarily, in such cases, it is the University which would take into account the factual situation and larger interest of student community and take a decision. A court of law would be slow in interfering with the decision of the University in not granting the benefit/concession of ATKT, which is in the nature of exception to the main rule that every student has to clear the examination in its entirety. In view of the authoritative pronouncements of this court, we see no merit in the petition. The petition is dismissed.

(SMT. RANJANA DESAI, J.)

(ABHAY S. OKA, J.)